# CITIES AND TOWNS BULLETIN

**AND UNIFORM COMPLIANCE GUIDELINES**
**ISSUED BY STATE BOARD OF ACCOUNTS**

September 2001

## JUNE TRAINING SCHOOL

The State Board of Accounts extends its deepest appreciation to the officers and committees of the Indiana League of Municipal Clerks and Treasurers for making the arrangements and handling the registrations for the training session. Our special thanks go to outgoing President Debbie Block, incoming President Michael Griffin, and again we especially want to thank Fred Lewis, School Committee Chairperson. Next year's June School is tentatively scheduled for June 12 and 13, 2002, at the Indianapolis Marriott on the east side of Indianapolis.

## SALARIES – UTILITY SERVICE BOARD MEMBERS

Since IC 8-1.5-3-3(e) requires the ordinance establishing a utility service board to provide for the salaries, if any, to be paid to the members, any such increases in salaries in subsequent years would require an amendment to such ordinance by the common or town council.

## COURT COSTS – WHEN DEFENDANT IS NOT LIABLE FOR

A defendant against whom a judgment is entered is liable for costs. Costs are part of the judgment and may not be suspended except under IC 9-30-3-12. Whenever a judgment is entered against a person for the commission of two (2) or more civil violations (infractions or ordinance violations), the court may waive the person's liability for costs for all but one (1) of the violations. This does not apply to judgments entered for violations constituting:

1. Class D infractions (Seatbelt Violations); or
2. Class C infractions for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8.

If a judgment is entered:

1. for a violation constituting:
   - A. a Class D infraction; or
   - B. a Class C infraction for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8; or
2. in favor of the defendant in any case;

the defendant in not liable for costs. (IC 34-28-5-5)

## CLERK'S RECORD PERPETUATION FUND

IC 33-19-6-1.5 requires each city or town operating a city or town court to establish a clerk's record perpetuation fund. The following shall be deposited in the fund:

1. revenue received by the court clerk for the transmitting of documents by facsimile machine to a person under IC 5-14-3; and
2. document storage fees required under IC 33-19-6-18.1.

Such fees are to be remitted by the court to the city or town fiscal officer at the end of each month.

The clerk of a city or town court may use the money in the fund for the preservation of records and improvement of record keeping systems and equipment. The fund would require appropriation.

# GUARANTEED ENERGY SAVINGS CONTRACTS

## Undocumented Claims

Please be aware we have noted in audits of "guaranteed energy savings contracts" instances of references to "stipulated savings", "agreed-upon savings", "mutually agreed-upon savings", "capital costs savings", "repair costs", "capital cost avoidance", etc. Some of these items are deemed realized upon the execution of the contract. We are noting in many instances that no documentation or other supporting information is presented for audit to document or support savings in energy and operating costs due to the energy conservation measures. Furthermore, some units of government have been provided information by the contractor awarded the contract, that certain costs such as "avoidance of future capital costs" could be considered operating savings. However, these types of costs are generally the energy conservation measures themselves such as capital outlay or fixed asset type of items in nature (i.e., the cost of a new roof, the cost of new windows, or the avoidance of future costs thereof). These terms and procedures, for audit purposes, generally are not considered an acceptable substitute for documentation of energy and operating cost savings.

## Documented Savings

Detailed utility bills may be an acceptable documentation of energy savings. Additionally, reasonable documented costs associated with reduced maintenance may be an acceptable operating cost savings. An example might be that five minutes is required to change a light bulb. Bulbs are now, because of capital outlays for energy conservation measures, not changed every year. If 4,000 bulbs are normally changed each year, a maintenance person might be saved from doing 333 hours of bulb changing, which at a $12 an hour could equate to a $3,996 operating cost savings.

## Operating Expenditures – Accounting Terminology

Governmental Accounting, Auditing and Financial Reporting (GAAFR) issued by the Government Finance Officers Association, 2001, page 573, defines Operating costs and Capital costs as: (1) **Current operating expenditures** primarily benefit the current fiscal period. (2) **Capital outlays** benefit both the current and future fiscal periods.

Accounting texts, including Principles of Accounting, revised 1989, by Helmkamp, Imdieke and Smith, differentiate between operating and capital expenditures as "Expenditures made to acquire, improve, and maintain plant assets are either capital expenditures or revenue expenditures. Capital expenditures are those that add to the usefulness of a plant asset for more than one accounting period… Revenue expenditures are those that benefit the current accounting period only."

An Introduction to Guaranteed Energy Savings Contracts for Public Schools and Local Governments, published by the Indiana Department of Commerce, Energy Policy Division, states in part on page 9: "If repairs are required before an energy conservation measure can be implemented, then those repairs must be made separate from the guaranteed energy savings contract. Structural repairs of a facility are not energy conservation measures. For example, the addition of insulation to the roof or walls of a building may be covered under a guaranteed energy savings contract. Repairs or replacement of the roof or walls, however may not."

An Introduction to Guaranteed Energy Savings Contracts for Public Schools and Local Governments, published by the Indiana Department of Commerce, Energy Policy Division, states on pages 14 and 15: "As required by IC 36-1-12.5, the provider must guarantee that the savings in energy and operating costs due to the energy conservation measures will cover the costs of the payments for the measures. If the actual savings are less than the guaranteed savings, the provider must reimburse the political subdivision for the difference. It is important to note that the savings must be **actual reductions** in the organization's costs and must also be the direct result of an energy conservation measure… Political subdivisions should be very cautious when dealing with operating cost savings. Providers have

GUARANTEED ENERGY SAVINGS CONTRACTS (Continued)

been known to inflate or manipulate operating cost savings in order to justify or sell a project. Operating cost savings may be included in a guaranteed energy savings contract only when they (1) are the direct result of an energy conservation measure, (2) represent a reduction in actual costs, and (3) result from the normal operation of the equipment of building. Other forms of operating cost savings are simply a "shell game" and will not result in the true savings needed to pay for the costs of the measures…"

Statutory Considerations

IC 36-1-12.5-5(a) concerning energy savings contracts states in part: "The governing body may enter into… a guaranteed energy savings contract with a qualified provider to reduce the school corporation's or the political subdivision's energy consumption costs or operating costs if, after review of the report described in section 6 of this chapter, the governing body finds: (1) that the amount the governing body would spend on the energy conservation measures under the contract and that are recommended in the report is not likely to exceed the amount to be saved in energy consumption costs and other operating costs over ten (10) years from the date of installation if the recommendations in the report were followed; and (2) in the case of a guaranteed energy savings contract, the qualified provider provides a written guarantee as described in subsection (d)(2)."

The State Board of Accounts believes the following best summarizes our audit position that IC 36-1-12.5-5(d) provides that the energy conservation measures (capital costs) must equal the savings in energy and operating costs. Otherwise the qualified provider will reimburse the school corporation or political subdivision for the difference between the guaranteed savings and the actual savings. Capital costs or avoidance thereof cannot also be used as an operating or energy savings.

IC 36-1-12.5-5(d) which states in part: "An agreement to participate in a… guaranteed energy savings contract under this section must provide that:… (2) in the case of the guaranteed energy savings contract: (A) **the savings in energy and operating costs** due to the energy conservation measures are guaranteed to cover the costs of the payments for the measures; and (B) *the qualified provider will reimburse the school corporation or political subdivision for the difference between the guaranteed savings and the actual savings…"* Our Emphasis.

In other words, the actual savings in energy and operating costs must equal the costs incurred due to the energy conservation measures. Otherwise, the qualified provider will reimburse the school corporation or political subdivision for the difference between the guaranteed savings and the actual savings.

Annual Reporting

IC 36-1-12.5-10 states "The governing body shall annually report to the department of commerce, in accordance with procedures established by the department of commerce, the savings resulting in the previous year from the guaranteed energy savings contract or utility energy efficiency program."

An Introduction to Guaranteed Energy Savings Contracts for Public Schools and Local Governments, published by the Indiana Department of Commerce, Energy Policy Division, states on page 22: "The report is to be submitted to the Energy Policy Division no later than 15 days after the end of each year the savings guarantee is in force."

Audit Exceptions

The State Board of Accounts will take audit exception to undocumented operating or energy savings claimed using procedures which "stipulate", "agree upon", or otherwise do not document actual operating or energy savings. A city or town should request repayment for undocumented operating or

## GUARANTEED ENERGY SAVINGS CONTRACTS (Continued)

energy savings in accordance with IC 36-1-12.5-5(d)(2)(B). The State Board of Accounts will request repayment of undocumented operating or energy savings which have not been reimbursed to a city or town by the end of the contract period. Capital costs and capital cost avoidance items may be requested to be repaid at the time of audit.

Additionally, the State Board of Accounts will take audit exception if a city or town has not properly filed reports with the Indiana Department of Commerce, Energy Policy Division, as required by IC 36-1-12.5-10.

The State Board of Accounts is also of the audit position that political subdivisions are required to comply with all grant agreements, rules, regulations, bulletins, directives, letters, letter rulings and filing requirements concerning reports and other procedural matters of federal and state agencies, including opinions of the Attorney General of the State of Indiana, and court decisions. Governmental units should file accurate reports required by federal and state agencies. Noncompliance may require corrective action.

## HOME RULE

All cities and towns have home rule powers as set out in IC 36-1-3. The following should be considered when exercising such powers.

### Limitations on Home Rule

It is desirable to look at the limitations, both expressed and implied, that have been placed on the scope of Home Rule powers. As noted in prior bulletins, Home Rule was never intended to give local governments a completely free hand to do whatever they want, and there are definite rules and limits that must be observed.

### Expressed Limits of Home Rule

The Home Rule law contains a number of expressed provisions that preclude, limit, or condition the exercise of powers under Home Rule.

First, there are two general limits. A unit may not do anything that is:

1. expressly denied by the state constitution or state law (for example, a unit could not prescribe a penalty for an action that violates state law or impose jail time as a penalty for violation of a local ordinance).
2. expressly granted to another entity (counties, for instance could not take over functions or usurp powers vested by law in municipalities, townships, etc.).

In addition, there are other powers of a more specific character that units still may not exercise in the absence of authorization by state law. These include:

1. The power to condition or limit its civil liability, except as expressly granted by statute.
2. The power to prescribe the law governing civil actions between private persons.
3. The power to impose duties on another political subdivision, except as expressly granted by statute.
4. The power to impose a tax, except as expressly granted by statute.
5. The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.

HOME RULE (Continued)

6. The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.
7. The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.
8. The power to prescribe a penalty for conduct constituting a crime or infraction under statute.
9. The power to prescribe a penalty of imprisonment for an ordinance violation.
10. The power to prescribe a penalty of a fine as follows:
    A. More than ten thousand dollars ($10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air program under IC 13-17-12-6.
    B. More than two thousand five hundred dollars ($2,500) for any other ordinance violation.
11. The power to invest money, except as expressly granted by statute.
12. The power to order or conduct an election, except as expressly granted by statute.

Implicit Limitations of Home Rule

In addition to those limitations that are expressed in the Home Rule law, there are also a number of important considerations that will further limit the scope and applicability of Home Rule powers. These limits are not made explicit in the Home Rule law, but may be applied from examining other statutes and principles of law. These implied limitations include:

1. a governmental unit may not exercise powers outside its normal territorial jurisdiction, except as specifically authorized by law or through interlocal agreement; and
2. restrictions inherent in the federal laws, regulations, and constitution must be observed.

Procedures for Utilizing Home Rule

The ability to use Home Rule properly is not only important in terms of allowing government flexibility as needed, but is even more important now that many of the state laws which previously provided permissive powers to local units have been repealed. This is especially true of those laws which constituted "class" legislation in the past. Therefore, aside from providing additional powers, local units will need to invoke Home Rule authority in passing local ordinances to continue powers or procedures formerly granted by specific state statutes.

Who Can Utilize Home Rule Powers?

The Home Rule law confers these powers to counties, cities, towns, schools, and townships. Libraries have never been accorded Home Rule powers, nor have special entities such as special service corporations or regional commissions.

When Should Home Rule Powers Be Used?

A unit may exercise its Home Rule powers whenever it is "necessary or desirable" to exercise any power, perform any function, provide any service – and create the structural elements or procedures to do so – and:

1. the laws and constitutions of the state and federal governments do not expressly or implicitly prohibit or preempt it from doing so; and

## HOME RULE (Continued)

2. state law does not already provide for exercising the power, providing the service, or performing the function, or state law does provide for the foregoing but does not mandate any procedures to follow in implementing it.

### How Are The Home Rule Powers Exercised?

A question that one often hears when talking about Home Rule is, "Well that all sounds very nice – but how do we adopt Home Rule?" The answer to this question is very simple – you don't adopt Home Rule. Home Rule represents both a policy of the state and a particular method of more efficiently conveying powers to local governments. Home Rule is not like a "local option tax" that requires further action to become effective within a particular local jurisdiction.

Local action is required only when a unit wants to do some particular thing under Home Rule authority. A unit doesn't "adopt Home Rule," but it does adopt specific powers that it wants to exercise. The formal ordinance procedure is required to accomplish this end.

An error to which Home Rule has been subject in the past is the impression that it confers powers on local officials and bodies individually. Occasionally individual officials wanting to perform some function and seeing no state law prohibiting them from doing so have acted with the idea that "if anybody gripes, I'll say its Home Rule." Home Rule does not work that way. Home Rule is essentially a legislative power – a form of limited legislative discretion delegated by the state legislature to the appropriate local legislative bodies.

In essence, local ordinances substitute for state laws in the exercise of Home Rule powers. The bodies that must pass the appropriate authorizing ordinances are:

1. in the case of a town, the town council;
2. in the case of a city, the city council;
3. in the case of Indianapolis/Marion County, the city-county council.

The ordinance authorizing the exercise of a new power, the performance of a new function, or the provision of a new service under the authority of the Home Rule law should be adopted according to the same rules and procedures generally applicable to the adoption of ordinances by the local legislative body. Although it is not a specific requirement, it would probably be advisable to state in the preamble or digest of the ordinance (not in the body of the ordinance itself) that Home Rule powers vested in the unit's government by IC 36-1-3 are being exercised so that the source of authority will be clear in the event that the action is questioned.

## MUNICIPAL UTILITIES – GENERAL QUESTIONS

The following questions are questions received frequently. We are listing our audit position in response to these inquiries.

1. **Question:** Does a city or town which owns and operates its own waterworks have the right to correct a water bill that is erroneous?
   **Answer:** Yes. Once a decision has been reached, all board actions should be documented and recorded in that body's minutes.

2. **Questions:** May that city or town compromise a water bill even if it is not erroneous?
   **Answer:** The city or town should comply with the provisions of the rate ordinances adopted for its utilities.

MUNICIPAL UTILITIES – GENERAL QUESTIONS (Continued)

3. **Question:** Is a city or town that owns and operates its own sewage works required to assess a lien pursuant to IC 36-9-23-32 once the sewer charges become delinquent?
**Answer:** We believe that the provisions of IC 36-9-23-32 and IC 36-9-23-33 must be followed.

4. **Question:** Does the 10% delinquent fee referred to in IC 36-9-23-31 constitute a monthly penalty for a delinquent bill or is it a one time penalty?
**Answer:** We believe the 10% delinquent penalty is a one time charge assessed against fees as they become delinquent.

## AUDIT REQUESTS

Current prevailing state statutes (see IC 5-11-1-25) require the State Board of Accounts to audit all cities regardless of size and those towns with populations greater than 5,000 on an annual basis. Towns with a population of 5,000 or less must be audited every two years. This audit responsibility is in addition to all other governmental and not-for-profit entities that we must audit or for which we have audit oversight responsibilities. Due to this tremendous workload, we physically are unable to immediately respond to requests for special audits of cities and towns.

It should be noted if any official suspects or has reason to believe funds are missing or are being taken, the Field Supervisor for that area or the State Examiner in Indianapolis should be contacted for immediate evaluation and investigation.

All audit requests should be directed to the State Examiner and should set out the reason(s) for such requests. If the audit requested falls within our pre-planned annual audit program, we will make every effort to expedite the assignment to satisfy the inquiry.

## MOTOR VEHICLE HIGHWAY ACCOUNT
## APPROVED USES OF DISTRIBUTIONS BY CITIES AND TOWNS

IC 8-14-1-5 limits the use of city and town Motor Vehicle Highway Account distributions to "their highways." IC 8-14-1-1(3) defines the term "highways" to include "roadway, rights of way, bridges, drainage structures, signs, guard rails, protective structures in connection with highways, drains, culverts, and bridges and the substructure and superstructure of bridges and approaches thereto and streets and alleys of cities or towns." Following is a listing of the approved uses.

1. Construction and reconstruction of streets, alleys, and curbs.
2. Repair and maintenance of streets, alleys, and curbs.
3. Oiling, sprinkling, snow removal, weed and tree cutting and cleaning streets, alleys, and curbs.
4. Costs of the separation of the grades of crossing of public highways and railroads.
5. Purchase or lease of highway construction and maintenance equipment.
6. Purchase, erection, operation and maintenance of traffic signs and signals, and safety zones and devices.
7. Painting of structures, objects, surfaces and highways for the purpose of safety and traffic regulations.
8. Law enforcement purposes subject to the following limitations:
   A. for cities and towns with a population of less than five thousand (5,000) no more than fifteen percent (15%) may be spent for law enforcement purposes.
   B. for cities or towns other than those specified in (A), no more than ten percent (10%) may be spent for law enforcement purposes.

## MOTOR VEHICLE HIGHWAY ACCOUNT
## APPROVED USES OF DISTRIBUTIONS BY CITIES AND TOWNS (Continued)

Expenditures of Motor Vehicle Highway Distributions must have been budgeted and appropriated in the same manner as required for expenditure of general property tax revenues.

IC 8-14-1-3 provides the penalty for misapplication of Motor Vehicle Distributions and states in part:

If any funds allocated to any city or town shall be used by any officer of officers of such city or town for any purpose or purposes other than for the purposes as defined in this chapter, such officer or officers shall be liable upon their official bonds to such city or town in such amount so used for other purposes than for the purposes as defined in this chapter, together with the costs of said action and reasonable attorney fees, recoverable in an action or suit instituted in the name of the state of Indiana on the relation of any taxpayer or taxpayers resident of such city or town…."

## LOCAL ROAD AND STREET ACCOUNT
## APPROVED USES OF DISTRIBUTIONS BY CITIES AND TOWNS

IC 8-14-2-5 states: "Money from the local road and street account shall be used exclusively by cities, towns, and counties for:

1. engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems;
2. the payment of principal and interest on bonds sold primarily to finance road, street, or thoroughfare projects;
3. any local costs required to undertake a recreational or reservoir road project under IC 8-23-5; or
4. the purchase, rental or repair of highway equipment."

IC 8-14-2-7 only applies to towns in Marion County and states: "An included town under IC 36-3-1-7 may transfer surplus allocated monies to the town general fund from the local road and street account if those monies have not been allocated or expended within the previous twenty-four (24) months."

It appears legislative intent is for local road and street account distributions to be used only for direct expenses incurred in the construction, reconstruction, or maintenance of arterial and local roads and streets in cities and towns. This would prohibit the use of such funds for building buildings or for such indirect costs as administrative salaries or supplies, goods, or materials not used directly for one of the aforementioned purposes.

Local road and street account distributions must be budgeted and appropriated prior to expenditure in the same manner as property tax revenues.

## COURTS – LATE PAYMENT FEES

A court may adopt a local rule to impose a late payment fee on defendants paying court costs, fees, fines and civil penalties after the due dates set by the court for payment of such amounts. The clerk of a court that adopts a local rule imposing a late payment fee shall collect a late payment fee of twenty-five dollars ($25) from the defendant.

The clerk of a city or town court shall distribute monthly to the city or town fiscal officer one hundred percent (100%) of the late payment fees collected. The city or town fiscal officer shall deposit fees distributed by a clerk in the city or town general fund. [IC 33-19-6-20]

## CUMULATIVE CAPITAL IMPROVEMENT FUND

Public Law 41, Acts of 2001, amended IC 36-9-16-3 to allow those cities and towns with a property tax levy for the cumulative capital improvement fund to also use such revenue:

1. To purchase, lease, upgrade, maintain, or repair one (1) or more of the following:
   A. Computer hardware.
   B. Computer software.
   C. Wiring and computer networks.
   D. Communication access systems used to connect with computer networks or electronic gateways.
2. To pay for the services of full-time or part-time computer maintenance employees.
3. To conduct nonrecurring in-service technology training of unit employees.

Please note that if a city or town has adopted the Cumulative Capital Development (CCD) Fund under IC 36-5-15.5 and your ordinance establishing such fund lists IC 36-9-16-3 as a permitted use of the fund, then the CCD fund may also be used for the aforementioned uses.

If a city or town wishes to amend its CCD ordinance to add such permitted use, then the city or town must follow the same steps required when originally setting up the fund (except the rate may remain the same.)

## HAZARDOUS MATERIALS CLEANUP COSTS

A fire department imposing a charge for hazardous materials cleanup costs may bill the responsible party for the total value of the assistance provided, as determined from the State Fire Marshal's schedule of service charges issued under IC 36-8-12-16(e).

Money collected must be deposited in the general fund of the city or town that established the fire department under IC 36-8-2-3 and may be used only for the following:

1. Purchase of supplies and equipment used in providing hazardous materials emergency assistance.
2. Training for members of the fire department in skills necessary for providing hazardous materials emergency assistance.
3. Payment to persons with which the fire department contracts to provide services related to the hazardous materials emergency assistance provided by the fire department.

A fire department may not bill for services provided that duplicate services provided by another governmental entity.

The responsible party billed for services may elect to reimburse the fire department by providing replacement materials that are of equal or greater value than those expended by the fire department in responding to the emergency.

A fire department that imposes a service charge and maintains an action for reimbursement under IC 13-25-6-5 may recover all costs of the action, including attorney's fees.

A responsible party is subject to a penalty for failure to pay the full amount of a charge made within sixty (60) days after the issuance of the bill for payment by the fire department. The amount of the penalty is ten percent (10%) of the amount of the charge that remains unpaid on the due date.

## COMPENSATION – WAIVER OF BY TOWN OFFICERS

A town officer may waive the officer's compensation for any year by filing a notice that satisfies the following:

1. The notice is in writing.
2. The notice states in substance all of the following:
   A. The position held by the town officer.
   B. The calendar year covered by the notice.
   C. That the town officer waives compensation.
   D. That the town officer understands that the notice is irrevocable beginning January 1 of the year covered by the notice.
3. The notice is signed by the town officer who wants to waive compensation.

A town officer who wants to waive compensation must file the notice with the town clerk-treasurer before January 1 of the year covered by the notice.

A notice filed is irrevocable beginning January 1 of the year covered by the notice.

A town officer who files a notice:

1. is not entitled to compensation for duties performed in the year covered by the notice; and
2. may not be paid compensation for duties performed in the year covered by the notice.

For the purposes of waiving salary, "compensation" means the total of all money paid to an elected town officer for performing duties as a town officer, regardless of the source of funds from which the money is paid. The term also includes all employee benefits paid to a town officer, including life insurance, health insurance, disability insurance, retirement benefits, and pension benefits. [IC 36-5-3-6]

## ASSIGNMENT OF WAGES

Any assignment of the wages of an employee is valid only if all of the following conditions are satisfied:

1. The assignment is:
   A. in writing;
   B. signed by the employee personally;
   C. by its terms revocable at any time by the employee upon written notice to the employer; and
   D. agreed to in writing by the employer.

2. An executed copy of the assignment is delivered to the employer within ten (10) days after its execution.

A wage assignment may be made for the purpose of paying any of the following:

1. Premium on a policy of insurance obtained for the employee by the employer.
2. Pledge or contribution of the employee to a charitable or nonprofit organization.
3. Purchase price of bonds or securities, issued or guaranteed by the United States.

## ASSIGNMENT OF WAGES (Continued)

4. Purchase price of shares of stock, or fractional interests therein, of the employing company, or of a company owning the majority of the issued and outstanding stock of the employing company, whether purchased from such company, in the open market or otherwise. However, if such shares are to be purchased on installments pursuant to a written purchase agreement, the employee has the right under the purchase agreement at any time before completing purchase of such shares to cancel said agreement and to have repaid promptly the amount of all installment payments which theretofore have been paid.
5. Dues to become owing by the employee to a labor organization of which the employee is a member.
6. Purchase price of merchandise sold by the employer to the employee, at the written request of the employee.
7. Amount of a loan made to the employee by the employer and evidenced by a written instrument executed by the employee subject to the amount limits set forth in IC 22-2-6-4(c).
8. Contributions, assessments, or dues of the employee to a hospital service or a surgical or medical expense plan or to an employees' association, trust, or plan existing for the purpose of paying pensions or other benefits to said employee or to others designated by the employee.
9. Payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under any law of this state or of the United States.
10. Payment to any person or organization regulated under the Uniform Consumer Credit Code (IC 24-4.5) for deposit or credit to the employee's account by electronic transfer or as otherwise designated by the employee.
11. Premiums on policies of insurance and annuities purchased by the employee on the employee's life.
12. The purchase price of shares or fractional interest in shares in one (1) or more mutual funds.
13. A judgment owed by the employee if the payment:
    A. is made in accordance with an agreement between the employee and the creditor; and
    B. is not a garnishment under IC 34-25-3. [IC 22-2-6-2]

## RAINY DAY FUND

A city or town may establish a rainy day fund to receive transfers of unused and unencumbered funds under IC 36-1-8-5.

IC 36-1-8-5(b) states that whenever the purposes of a tax levy have been fulfilled and an unused and unencumbered balance remains in the fund, the fiscal body of the city or town shall order the balance of that fund to be transferred to the general fund or rainy day fund of the municipality, as provided in IC 36-1-8-5.1, unless a statute provides that it be transferred otherwise.

The rainy day fund is subject to the same appropriation process as other funds that receive tax money. Before making an appropriation from the rainy day fund, the fiscal body shall make a finding that the proposed use of the rainy day fund is consistent with the intent of the fund.

In any fiscal year, a city or town may transfer not more than ten percent (10%) of the city or town's total budget for that fiscal year to the rainy day fund.

The State Board of Tax Commissioners may not reduce the actual or maximum permissible levy of a city or town as a result of a balance in the rainy day fund of the political subdivision.

## HANDLING LAW ENFORCEMENT CONTINUING EDUCATION PROGRAM FEES

1. Each Court is to assess a three dollar ($3) law enforcement continuing education program fee in each action in which a defendant is found to have: (1) committed a crime; (2) violated a statute defining an infraction; or (3) violated an ordinance of a municipal corporation. [IC 33-19-6-7(c)]

2. Monthly, a county, city or town court clerk is to transmit the law enforcement continuing education fees collected to the county, city or town fiscal officer. [IC 33-19-5-1, IC 33-19-5-2, IC 33-19-5-3]

3. The fiscal officer shall deposit the fees into either the County User Fee Fund or the City or Town User Fee Fund. [IC 33-19-5-1, IC 33-19-5-2, IC 33-19-5-3]

4. A law enforcement agency may receive funds from a County User Fee Fund or a City or Town User Fee Fund by filing a claim with the county, city or town fiscal officer. The claim shall include a "verified statement" of cause numbers for fees collected that are attributable to the law enforcement efforts of that agency. Payment of the claimed amount from a County User Fee Fund or a City or Town User Fee Fund may be made without appropriation. [IC 5-2-8-2]

5. On receipt of the amount claimed by the law enforcement agency, the city or town fiscal officer shall place the amount received into the Local Law Enforcement Continuing Education Fund. [IC 5-2-8-2(b)]

6. Funds received by a law enforcement agency shall be used for the continuing education and training of law enforcement officers employed by the agency and for equipment and supplies for law enforcement purposes. [IC 5-2-8-6]

7. Amounts claimed for expenditures from the Local Law Enforcement Continuing Education Fund must have been appropriated prior to expenditure either through the normal budget process or by additional appropriation. [IC 33-19-8-4]

8. Any funds remaining in the Local Law Enforcement Continuing Education Fund at year-end do not revert.

## LAW ENFORCEMENT CONTINUING EDUCATION PROGRAM FEES - FILING VERIFIED STATEMENTS OF CAUSE NUMBERS

Since the statutes (IC 5-2-8, IC 33-19-8) are silent regarding by whom or in what manner the "verified statement of cause numbers" will be prepared, the State Board of Accounts has adopted the following suggested procedures to handle such filings:

1. The applicable law enforcement agency should prepare the claim using the proper accounts payable voucher form. At a minimum, the claim should indicate each fee collected by date of payment, cause number, defendant name, and receipt number if available.

2. The claim should be filed by the law enforcement agency with the fiscal officer of the governmental unit.

3. The fiscal officer shall transmit the claim to the court clerk in order for the claim to be verified.

LAW ENFORCEMENT CONTINUING EDUCATION PROGRAM FEES - FILING VERIFIED STATEMENTS OF CAUSE NUMBERS (Continued)

4. Once the court clerk verifies the fees claimed on the claim, the claim shall be transferred back to the fiscal officer for processing in the same manner as all other claims, i.e. submitted for the board approval and subsequent payment.

5. An alternative to steps number 3 and number 4 has been approved for some units. In this instance when the court clerk transmits the monthly collection of law enforcement continuing education fees to the fiscal officer, the court clerk includes a listing of the fees transmitted by date of payment, cause number, defendant name, and the law enforcement agency to which the fees are attributable. By doing this, the fiscal officer is able to verify the fees claimed by the various law enforcement agencies and is not required to go back to the court clerk.

   It would also be permissible for the law enforcement agency to attach a copy of such listing that is provided by a court to a claim once the law enforcement agency verified the accuracy of the data contained in the listing.